

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-11435

Adv. Case No. 09-01132

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In the Matter of:

CHARTER COMMUNICATIONS, INC., ET AL.

Debtors.

AND

JPMORGAN CHASE BANK, N.A., as Administrative Agent,

Plaintiff,

-against-

CHARTER COMMUNICATIONS OPERATING, LLC and CCO HOLDINGS, LLC,

Defendants.

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United States Bankruptcy Court

One Bowling Green

New York, New York

April 6, 2009

11:01 AM

B E F O R E:

HON. JAMES PECK

U.S. BANKRUPTCY JUDGE

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1 THE COURT: Be seated. I've seen the paperwork on
2 this, including the JPMorgan response to the debtors' motion
3 for a scheduling order. I know there's some people on the
4 phone as well. I'm not sure -- we have a number of people
5 here -- how many people will be talking. I assume Mr. Pantaleo
6 will be one.

7 MR. PANTALEO: I'll be one and my partner, Bruce
8 Angiolillo.

9 THE COURT: Okay.

10 MR. ANGIOLILLO: Good morning, Your Honor.

11 MR. POWELL: Good morning, Your Honor. Jeff Powell
12 for the debtors. I'll be one from the debtors' side.

13 THE COURT: Are those the speaking parts or I'm
14 almost going to hear from Mr. Allen's counsel and from
15 crossover committee counsel?

16 MR. POWELL: Yes.

17 MR. ZIMET: Robert Zimet of Skadden, Arps for
18 Mr. Allen.

19 MR. KORNBERG: Alan Kornberg and Andrew Ehrlich for
20 the crossover committee, to the extent we need to be heard.

21 THE COURT: Does anyone else anticipate speaking?

22 MS. JOHNSTON: Your Honor, Susan Johnson on behalf of
23 Wilmington as a second lien indenture trustee. We don't have a
24 position on the schedule as proposed, but we do have a position
25 regarding our right to monitor the adversary proceeding,

1 because it affects our interests, and I wanted to let Your
2 Honor know about that on this occasion. But I don't anticipate
3 having anything to say about the schedule.

4 THE COURT: All right.

5 MR. MOLTON: Your Honor, David Molton, Brown Rudnick,
6 for Wells Fargo, agent for the third lien holders, and we also,
7 like the seconds, would like to voice our presence here as a
8 party in interest, possibly, with respect to monitoring the
9 adversary proceeding, and to the extent that this scheduling
10 order pertains to the confirmation hearing and the trial
11 thereof, that's something we would be interested in as well.

12 THE COURT: All right. Why don't I identify a number
13 of issues that concern me, and these issues may not necessarily
14 be the ones that concern the parties but you might as well know
15 what I'm thinking.

16 The first is, and this shouldn't come as a surprise,
17 some concern that I have that this is being turned into an
18 adversarial process as it relates to scheduling. Ordinarily
19 the one week mark in a case of this size, which is unusual in
20 that discovery started pre-bankruptcy and that issues that are
21 identified for discovery are issues that the parties themselves
22 have recognized as critical to the plan process, ordinarily one
23 would expect there to be an agreement. So one of my questions
24 is why isn't there an agreement, particularly since as I read
25 the JPMorgan papers they consent to the trial date provided

1 they get certain things that they want with regard to
2 discovery, recognizing that their dates may be aggressive. It
3 seems to me that some discussion regarding adjustment of those
4 dates could lead to a consensual outcome. That's sort of a
5 simple answer to this. It may be less simple than I see, but
6 I'd like to know why that hasn't happened.

7 Secondly, there's nothing in the papers that I've
8 seen addressing the core versus noncore issues in the adversary
9 proceeding. I'd like to know when and how that issue is going
10 to be resolved, what happens if it isn't resolved but the
11 issues related to the adversary proceeding are, nonetheless,
12 presented during the confirmation hearing, as I expect they
13 will be.

14 What's the projected length of the trial? Something
15 tells me this isn't going to be a one day hearing. Have the
16 parties given thought to how many trial days are contemplated?
17 If you haven't done that, you should. And those are my
18 questions. I may have some more.

19 MR. POWELL: Good morning, Your Honor. Jeff Powell
20 for the debtors. Let me go in reverse order and try to address
21 those questions right now. With respect to the trial, you
22 asked last Monday what the trial would encompass. Would it be
23 just the adversary proceeding or would it be all issues? And
24 the answer, from our perspective, is all issues.

25 You also asked last week, and asked again today, how

1 long we envision the trial would last. And it's the debtors'
2 view that this trial should last no more than three days.

3 Your second question today, core versus noncore. I
4 was going to address that as well, and our response is this.
5 The debtors intend to file a motion to dismiss this week, going
6 to two issues. The first, the allegation that this is noncore,
7 and the second, the core factual allegation, the complaint that
8 two designated holding companies, that there was a default or
9 an event of default because two designated holding companies
10 were unable to pay debts as they would become due. Our
11 position is that's not either an event of default or default
12 under the credit agreement. So we intend to move to dismiss
13 the complaint on both of those grounds this week. We've been
14 in discussion with the banks. We'd like to ask Your Honor for
15 a return date on that motion of April 29, the disclosure
16 statement hearing, and as of thirty minutes ago we did not have
17 an agreement from the banks on that. I don't know what their
18 position is. Ours is we want to tee that issue up, and we'd
19 like to have it heard, Your Honor, on April 29th.

20 With respect to your first question, both as to the
21 possibility of adjusting the dates and why we don't have an
22 agreement on scheduling, with respect to the dates themselves
23 they are driven entirely by the trial date, and the trial date
24 is driven entirely by the lockup agreements that Mr. Basta and
25 Mr. Schrock referred to last week. We don't think there really

1 is any flexibility there. However, in response to your other
2 question, why isn't there an agreement on scheduling, I think,
3 in light of the papers filed by the banks on Friday, that we
4 should have an agreement. And let me address that right now.

5 The banks have served two document requests on the
6 debtors. The first request went to issues in the complaint,
7 and that was served on Sunday, March 1st. We've already
8 produced over 50,000 pages of documents responsive to that.
9 And in response to the bank's issue, can we be substantially
10 complete by April 9 with a privilege log by April 16, the
11 answer is yes, we can. So I'm hoping that with respect to that
12 request there is no disagreement on scheduling.

13 There is, however, a second document request, and I'm
14 not entirely sure whether the bank's proposal of April 9 and
15 April 16 applies to that as well. But that request is
16 different. That was served on us on March 11. It doesn't go
17 to issues in the complaint. Rather, it goes to classic
18 confirmation issues. Documents concerning valuation. NOLs.
19 Cancellation of debt income. Many of those requests, with
20 respect to many of those requests we will be substantially
21 complete by April 9th. With respect to a couple of the other
22 requests we can be substantially complete with that production
23 by April 16th, just a week later. So with respect to the first
24 request we can be done by April, or substantially complete by
25 April 9. With respect to at least half of the second request,

1 we'll be substantially complete by April 9, and with respect to
2 the second half we're about a week behind. And, Your Honor, I
3 would submit that to blow up the schedule or defer setting the
4 schedule, especially in light of these lockup agreements,
5 because we're only a week behind with respect to the second
6 request, which came later, would be unreasonable.

7 So I'm hoping, in light of our positions, that we
8 will, today, have an agreement on the schedule that we
9 proposed.

10 THE COURT: All right. Thanks.

11 MR. POWELL: Thank you.

12 THE COURT: Mr. Pantaleo, can we have an agreement?

13 MR. PANTALEO: Your Honor, I guess a couple of
14 issues. I'll let my partner, Mr. Angiolillo, address the
15 length of trial, Your Honor, and the issues surrounding the
16 schedule. With respect to the core/noncore, we heard last
17 night that they wanted to move to dismiss. And I agree, by the
18 way. We hadn't heard that within that motion they wanted to
19 address core/noncore. We agree it makes sense to address this,
20 obviously, sooner rather than later. In fact, there was a
21 suggestion that I had made before they filed, when I spoke to
22 Mr. Basta I told him to focus on that, and I said when we talk
23 about the schedule that's something that we'll probably need to
24 tee up sooner rather than later. So I think we're okay with
25 dealing with that in terms of an argument and briefing prior to

1 and then an argument when the disclosure statement is heard.
2 We haven't seen the motion to dismiss on the merits. If they
3 want to make the motion they'll make the motion. Our principal
4 focus, Your Honor, really, is just getting our documents,
5 because what we're concerned about is having kind of, like, led
6 with our chin, so to speak, by agreeing to their date, which
7 was not our date.

8 When we initially spoke to them, back in March 1st,
9 over that weekend, when we showed them our complaint and gave
10 them our discovery, we actually were suggesting a trial date at
11 the end of September. They were pushing back, talking about
12 their deadlines, and, initially, our reaction was not, you
13 know, frankly, we said well, the deadlines were negotiated
14 without us even though you knew you had to litigate with us.
15 So now we'd like to talk about the deadlines, but in the scheme
16 of things, particularly in light of a commitment they made to
17 us that they'd give us their documents, Charter would, by the
18 end of March, we agreed. We just decided we would take their
19 schedule, make it easy, but we really do want our documents.
20 And I'll let Mr. Angiolillo sort of speak to what Mr. Powell
21 had proposed. So if they want to file a motion to dismiss
22 they're free to do that. I mean, I'm not certain it makes
23 sense other than to address core or noncore. But we'll
24 obviously take a look at it and address their schedule with
25 them once we see it, perhaps, if that makes sense to Your

1 Honor.

2 Alternatively, if Your Honor feels you have to set a
3 schedule now with respect to both core and noncore as well as
4 the motion to dismiss then we can agree to the schedule
5 although, again, our principal focus, Your Honor, is not to get
6 distracted with the sideshow and just get our documents so we
7 can really address the issues that we know need to be
8 addressed.

9 I think that's all I wanted to address for Your
10 Honor, and I think I'll turn it over to Mr. Angiolillo to talk
11 about both length of trial as well as the scheduling issues and
12 the document production issues that we have and our concerns.

13 THE COURT: Okay.

14 MR. PANTALEO: Thank you.

15 MR. ANGIOLILLO: Good morning, Your Honor. Again,
16 Bruce Angiolillo from Simpson Thacher for JPMorgan Chase as
17 agent. I'm the litigator, and if I may address Your Honor's
18 first question with respect to how we find ourselves one week
19 into a reorganization process that has become adversarial, let
20 me address it and with respect to what the open issue is. As
21 Mr. Powell indicated, it appears that the friction between the
22 interested parties at this point is when will the document
23 productions be complete? And in that regard, Your Honor, the
24 schedule that they've proposed that we are prepared to live
25 with is fundamentally, Your Honor, if I may be colloquial, a

1 very big ask. And it's a very big ask because they want to
2 just -- they want to start depositions this month. They want
3 to complete them in sixty days. They want a very early trial
4 date. And --

5 THE COURT: Well, welcome to bankruptcy court.

6 MR. ANGIOLILLO: Yes, Your Honor. And it's for that
7 reason that back in February, and, indeed, back in January,
8 faced with a process that was unfolding to the exclusion of the
9 senior lenders we reached out and said we understand that
10 you're going to want to move aggressively. Let us work with
11 you so that with respect to the disputes that we apparently
12 have that we will have the documents and we'll be able to move
13 as expeditiously as you want to move. Because the reason why
14 there is a July 27 proposed trial date is one that's been
15 created by the parties. July 23. Excuse me, Your Honor.

16 THE COURT: I was double checking because it was the
17 wrong date.

18 MR. ANGIOLILLO: I'm supposed to be in trial in
19 Washington, DC on the 27th, but that's neither here nor there.

20 What's missing from the schedule is a completion date
21 for document production. Now, Your Honor, as Mr. Powell
22 indicated, that we couldn't get anyone's attention until
23 Mr. Pantaleo delivered to Mr. Basta the complaint. And then we
24 finally got someone who would return our calls. And that led
25 to face-to-face discussions between the bankruptcy

1 practitioners and the litigators, with the assurances from
2 Charter, both on its own behalf and on behalf of advisors and
3 offering their good offices with respect to the bondholders and
4 the Paul Allen Group, that if we held off from commencing this
5 breach of contract action relating to prepetition conduct,
6 which we were prepared to file, which the clients had
7 authorized us to file, we would hold off, and they indicated
8 that they anticipated filing for bankruptcy possibly at the end
9 of the month of March. We would hold off if you gave us your
10 documents.

11 And so that there wouldn't be any dispute, and so
12 there wouldn't be any confusion, within a matter of days we
13 delivered a written document request. In response to that
14 written document request, which relates to the allegations in
15 the complaint, Mr. Basta said, you know, we understand that you
16 have other issues that are going to be ripening when we file.
17 So rather than put that off, contrary to what Mr. Powell was
18 saying today, we want a second request from you. And we want
19 you to lay out all the other requests with respect to change of
20 control issues, feasibility of the plan issues, because we want
21 to get you all of those documents before the end of March.

22 And we said okay. And we said we will not file the
23 complaint, and we will abide the process. And, as Your Honor
24 heard last week at the first day hearing, that what did we end
25 up with by the end of the month of March? Two boxes of

1 documents before they filed. And then, because of a conference
2 call on that Friday before we came to see Your Honor on Monday,
3 where we figured out that they have a data room. A data room.
4 We're talking a data room.

5 THE COURT: Are we talking a --

6 MR. ANGIOLILLO: And everybody else has had access to
7 them.

8 THE COURT: Are we talking a data room or are we
9 talking a virtual data room?

10 MR. ANGIOLILLO: We're talking, I think, a virtual
11 data room, Your Honor. That only upon figuring that out, then,
12 over the weekend, well, now, maybe we'll have access to the
13 data room. After we saw Your Honor last week, and after
14 hearing what their proposed schedule was, we wrote, my partner
15 Mr. Wang, wrote a letter and said so we can come in today
16 without this dispute, notwithstanding the commitment to produce
17 the documents by March 31, which you are unable to do, make a
18 commitment to us that you'll get them to us by the end of the
19 week. Can't do that. Well, make us a commitment that you can
20 get to them by April the 9th. I can't really do that either.
21 And with respect to your advisors, the lawyers who represented
22 you at the time you entered into the credit agreement, with
23 respect to the bondholders, with respect to Mr. Allen, we have
24 virtually nothing and no commitments. And that was part of the
25 deal back at the beginning of March as well.

1 So, Your Honor, where we end up is we'll live with
2 this schedule. But what we need from the Court as part of this
3 schedule, which we have requested but has been rejected, we
4 need Your Honor to say if you're inclined to embrace the
5 schedules being proposed which JPMorgan Chase, as agent bank,
6 will live with, set a date certain for the document production
7 to be completed by Charter, by the Allen Group and by the
8 bondholders and their advisers, as they previously committed,
9 as they indicated that they would do by the end of March. Set
10 a date, respectfully, Your Honor. We need a date. We can live
11 with April the 9th.

12 THE COURT: Before you sit down --

13 MR. ANGIOLILLO: Yes, Your Honor.

14 THE COURT: I just want a clarification on something
15 you just said. It's not clear to me in what manner the
16 document production agreement has been set forth in a binding
17 writing or whether or not it's simply an exchange of e-mails or
18 correspondence. I'd like to know how it is documented.

19 THE COURT: And it's also --

20 MR. ANGIOLILLO: It is --

21 THE COURT: I'm not quite done.

22 MR. ANGIOLILLO: Oh, excuse me, Your Honor.

23 THE COURT: And it's also not clear to me whether the
24 understandings that you have described relating to document
25 production that occurred during March, presumably as an

1 inducement for you to forbear from filing your complaints
2 sooner, presumably in district court or New York Supreme, it's
3 not clear to me whether other parties in interest were also
4 subject to the same understanding, namely Mr. Allen and the
5 crossover committee members. I'd like a clarification on those
6 two issues.

7 MR. ANGIOLILLO: Yes, Your Honor. If I may, the
8 agreement with respect to proceeding that was set forth back
9 in -- on March the 5th it was memorialized, I believe, Your
10 Honor. And the body of an e-mail exchange between my partner,
11 Mr. Pantaleo and Mr. Basta set forth the agreement that had
12 been reached. If Your Honor wishes to have a copy we can
13 provide it to you.

14 THE COURT: I don't need it.

15 MR. ANGIOLILLO: Okay.

16 THE COURT: I was just wondering how it was
17 evidenced.

18 MR. ANGIOLILLO: Right. Now, least I create any
19 misimpression with the Court, I stand here not today to ask the
20 Court to enforce an agreement among counsel that proceeded the
21 commencement of this proceeding. I'm also not asking the Court
22 to rule with respect to the good faith or the past performance
23 of any of the interested parties. What I'm here to say is I'm
24 reporting to the Court what has happened. And given the
25 schedule that is being put forward here, and given that it all

1 hangs on the ability to obtain the documents, that if past is
2 prologue we need a date certain for them to complete
3 production. And that's the only ingredient that's missing, at
4 this point, from the proposed schedule.

5 Your Honor also asked earlier with respect to the
6 amount of time that the parties anticipate the confirmation
7 processing hearing/adversary proceeding would take. Your
8 Honor, at this point in time we're in the realm of
9 guesstimates, but based upon past experience I think three days
10 is probably the minimum, but I don't expect, Your Honor, that
11 it would stretch more than a working week. That's my best
12 judgment at this point in time. If there are any other
13 questions, Your Honor?

14 THE COURT: No. Thank you.

15 MR. ANGIOLILLO: Thank you.

16 MR. POWELL: Your Honor, I'm sorry. I just wanted to
17 respond very briefly, if I could.

18 THE COURT: All right. And then I'll hear from
19 counsel for the crossover committee. No, you can respond.

20 MR. POWELL: Okay.

21 THE COURT: And then I'll hear from counsel for the
22 crossover committee, and then I'll hear from counsel for
23 Mr. Allen.

24 MR. POWELL: As I started with, the bank's response
25 on Friday said that they would live with this schedule if we

1 were substantially complete by April 9. And I said to Your
2 Honor, with respect to the first request, we would. With
3 respect to the second request, part of that is going to come a
4 week later. So in my view we have addressed the bank's
5 concerns.

6 I do want to, Your Honor, respond to some of the
7 statements and implications about the pace of our document
8 production. Within the last four weeks, after getting this
9 draft first document request, we have retained an outside
10 vendor, we have enlisted, I would say conscripted, ten to
11 thirty Kirkland & Ellis document reviewers. We've collected
12 more than 55,000 documents, and we've produced more than 50,000
13 pages of documents.

14 There was just a statement made that by the end of
15 March we had only produced a box or two of documents. That's
16 incorrect. By the end of March, which was the date reflected
17 in our agreement, we had produced more than 44,000 pages of
18 documents. All of that before the terms of a protective order
19 were even agreed upon. So the suggestion that we were dragging
20 our feet, Your Honor, is untrue.

21 Last point. With respect to this data room, there is
22 a data room. The data room, as Your Honor could imagine,
23 contains many, many documents that are not responsive to their
24 requests. By the time we got the request from the banks to
25 have access to the data room we had already gathered the

1 responsive documents from the data room. They wanted access to
2 the data room in its entirety. Within twenty-four hours we
3 gave them access. Within forty-eight hours they had a hard
4 copy of all the responsive documents. So, I think the
5 implications of what counsel just said are unfair and
6 inaccurate, Your Honor.

7 THE COURT: Okay.

8 MR. EHRLICH: Good morning, Your Honor. Andrew
9 Ehrlich from Paul Weiss for the noteholder clients. Your
10 Honor, we're slightly differently situated than Charter in
11 several respects, and I should preface my comments by the fact
12 that our clients want to get this result expeditiously and have
13 been working very, very hard to get all the information that
14 our colleagues at Simpson Thacher have requested, and we're
15 trying to do that in as collegial a fashion as possible. We
16 got draft document requests on March 11th, so we were a couple
17 of weeks behind the draft requests from Charter. We also have,
18 including advisors, roughly a dozen clients from whom we are
19 collecting. So, as Your Honor might imagine, the burden, the
20 logistical burden, is substantial.

21 Notwithstanding that, I advised Mr. Wang of Simpson
22 Thacher on Friday afternoon, prior to his filing his papers,
23 that we expected to be roughly a week to ten days, at the most
24 two weeks, behind Charter in terms of completing our
25 production. I could represent to the Court that we feel

1 comfortable we could substantially complete by April 20th,
2 which would be roughly ten days before depositions begin, with
3 substantial rolling production before then, so that by the
4 April 9th date the banks would have a large quantity of our
5 documents, and by April 20th we would be fully complete and
6 that we'd produce a privilege log by April 22nd. So we believe
7 that's a very reasonable schedule. I proposed it to Mr. Wang
8 on Friday. I didn't hear a response as of yet, and I'm hoping,
9 in response to your first question, we can work it out. The
10 motion appeared to call for an April 9th date, but given the
11 circumstances of when we first got the requests, the number of
12 clients, I will not bore the Court with the complexities of
13 twelve different information technology platforms and the like.
14 It has been a truly Herculean effort, but we are quite
15 optimistic we can do this quickly and get them everything
16 they've asked for by April 20th. I should note that they have
17 been quite reasonable. We've met and conferred numerous times
18 about the scope and time frame and the like, and we've, I
19 think, reached common sense ways of narrowing the request that
20 both parties can live with.

21 THE COURT: Okay.

22 MR. EHRLICH: Thank you, Your Honor.

23 MR. ZIMET: Your Honor, Robert Zimet for Mr. Allen.

24 To answer Your Honor's question with respect to timing for
25 completion we expect to have made a very substantial dent, and,

1 perhaps, even close to completion, later this week and view the
2 16th as a date where we could anticipate that we'll be
3 essentially done with our document production, barring
4 something going wrong. We have about sixteen lawyers who are
5 sleepless in Seattle going through the documents that have been
6 requested. Part of the reason why it is taking so long is
7 because of the natural difficulties that one has in formulating
8 computer searches and then coming to agreement with counsel
9 about them. For example, and this is not meant in any way to
10 cast dispersion on anybody, they propose a search term trying
11 to capture communications with Paul Weiss, and they say well,
12 search for everything with Paul on it. Of course Mr. Allen's
13 first name is Paul, so that has unintended consequences. But
14 we've been able to solve those problems, and, I think, in
15 fairness to everybody, getting documents essentially complete
16 two weeks before fact deposition starts is a luxury that we
17 often don't have in expedited proceedings, and I think that's
18 adequate to the circumstance. So unless Your Honor has any
19 questions, that's Mr. Allen's position.

20 THE COURT: No, I have no questions. Thank you.

21 MR. ZIMET: Thank you.

22 THE COURT: Is there anyone else who wishes to be
23 heard on this subject? Well, based on what I've heard and what
24 I've read it seems to me that there is substantial agreement on
25 the schedule that has been originally proposed by the debtor

1 for dealing with both the adversary proceeding and the issues
2 relating to confirmation, with the exception of the timing for
3 substantial completion of document productions by the debtors,
4 the crossover committee, and the Paul Allen Group and the date
5 for substantial completion of privilege logs. Not a lot has
6 been said about privilege logs, and I assume that that's
7 something that is being developed in the ordinary course of
8 document review and will not be an issue. If I'm wrong
9 somebody should break in and tell me that.

10 MR. ZIMET: I stand to break in, Your Honor, if I
11 may. I didn't address it, the subject of privilege logs,
12 because I hoped we could come to some agreement. One of the
13 things I would propose, for example, because if we're dealing
14 with many thousands of documents that are privileged, and the
15 communications between Mr. Allen and his counsel are many and
16 are electronic, and, what I would think is, if we could agree,
17 for example, that communications that are strictly between
18 Mr. Allen or principles of Vulcan and counsel, with nobody else
19 in the communication, that we don't have to -- and where
20 counsel believes they are requests for advice and advice going
21 back, we don't have to list them individually. That would
22 substantially ease the problem if we would -- we would provide
23 a conventional log, certainly, with respect to communications
24 where privilege is claimed where there may be third parties
25 involved in the communications so counsel can test it. That

1 type of accommodation, I hope, we could work out with counsel,
2 and that's a problem with producing a privilege log that I hope
3 wouldn't have to ask the Court to decide. But I hope that
4 would not.

5 MR. ANGIOLILLO: That's a nonissue, Your Honor.
6 We'll work with them on that.

7 MR. ZIMET: All right. Thank you.

8 THE COURT: All right.

9 MR. ZIMET: And thank you, Mr. Angiolillo.

10 THE COURT: All right. Thanks for the clarification.
11 The privilege log issue is, as a result of that colloquy,
12 really not an issue. What I understand to be the debtors'
13 position, all posturing by the parties put to one side, is that
14 substantial completion of document production as to request
15 number one is possible, and I think I heard a commitment that
16 it would occur on the 9th as requested by JPMorgan. As to
17 documents comprehended by the second document request, it's my
18 understanding that those will be produced by the 16th.
19 Correct?

20 MR. POWELL: Correct, Your Honor, as to both points.

21 THE COURT: It's also my understanding that counsel
22 both for the noteholder group and Mr. Allen's Group have
23 undertaken to substantially complete document production
24 relating to document requests that were served on March 11 by
25 the 20th. That's my recollection of what was said. If I have

1 the dates wrong somebody should correct me.

2 MR. ZIMET: I think we thought we could do a little
3 better, a few days better, but maybe I shouldn't have stood up
4 and said it.

5 THE COURT: Great. Then you'll do better. I'm just
6 hearing the 20th as an outside date, because I believe counsel
7 for the noteholder group indicated that the 20th was -- is that
8 correct?

9 MR. EHRLICH: That's correct, sir.

10 THE COURT: That the 20th was the outside date by
11 which their group should be able to substantially comply with
12 the document requests, and I incorporate, by reference, the
13 enormous burden associated with representing so many different
14 parties you have to go through a document review.

15 All of this seems to me like an agreement, because I
16 see no reason for me to micromanage the difference between the
17 16th of April and the 20th of April or the 16th of April and
18 the 23rd of April. Ordinarily judges, and this is true of
19 bankruptcy judges, district court judges and state court
20 judges, are loath to become involved in discovery disputes or
21 micromanaging discovery schedules unless it's absolutely
22 necessary to do so. And that's certainly true in my case.

23 This is, however, an unusual situation in that the
24 discovery at issue started prepetition in contemplation of
25 being completed post-petition. It's also unusual in that the

1 discovery, and I've seen none of the requests, appears to
2 extend not only to issues relating to the adversary proceeding
3 but also to the kinds of issues that one would ordinarily
4 expect to be the subject of a contested confirmation hearing.

5 As best I can judge from the comments of counsel and
6 the stature of counsel this process is being managed on an
7 extraordinarily expedited basis, in good faith, and I am not
8 aware of any grounds for any party, including the banks, to
9 assert grounds for delay or prejudice on the basis of the
10 delivery of documents a week later than proposed in the
11 JPMorgan response. In fact, reading between the lines of
12 Mr. Pantaleo's comments it seems that the principal issue that
13 brings this matter to court today is not so much the
14 identification of dates for the trial and for briefing and
15 witness discovery as much as it is providing some certainty
16 with respect to the timing of the turnover of documents. I
17 think that has been accomplished by virtue of the
18 representations that have made.

19 I'm prepared to approve the schedule as modified to
20 include dates for substantial completion of document
21 productions and a date for completion of privilege logs, but
22 rather than impose my best judgment as to what those dates
23 should be as a result of what I've heard it seems to me that it
24 would be useful for the parties who are present in Court today
25 to use this opportunity to reach an agreement concerning this

1 very narrow question, which is what will the outside dates be
2 for substantial completion of document production for each
3 party. The dates may differ depending on whether we're talking
4 about the debtor, the crossover group or the Paul Allen Group,
5 and for privilege logs. I believe that the agreements, once
6 reached, should be codified in a stipulation, which I will so
7 order, both in the main case and in the adversary proceeding.

8 Now, the trial date is something that I think the
9 parties should spend a little bit more time thinking about.
10 I'm not proposing that the 7/23/09 date be adjusted, but that's
11 a Thursday, and a three day trial means that you're all going
12 to be working in the middle of the summer on a Friday and a
13 Monday. And that's fine. I wouldn't make any plans for a
14 party in the Hamptons that weekend. But what I think you
15 should do is consider whether starting on a Thursday is, in
16 fact, sensible, given that both sides view this as a three day
17 trial. You may want to have the weekend in the middle. I
18 don't care. That's up to you. But you end up with a somewhat
19 broken trial. I'm indifferent. But give it some thought.

20 I will also need to check my calendar during the
21 break we're going to take right now to see which days
22 surrounding the 23rd are available. You may want to start a
23 day earlier. You may want to start the following week, if
24 that's available on Monday, so you can actually start at the
25 beginning of a work week. I'd like you to think about that,

1 just for purposes of having an orderly process.

2 Now, there's the pending matter of the motion to
3 dismiss. I am inclined to hear that on the 29th of April,
4 which is the day previously reserved for the disclosure
5 statement, but just because I'm inclined to do that doesn't
6 mean that I'm foreclosing an opportunity on the part of the
7 banks if they wish to argue for a different date after seeing
8 the motion itself. The comment made by Mr. Pantaleo earlier
9 was one based upon a black box theory. He's talking about the
10 scheduling of a hearing in connection with a motion to dismiss
11 which has been characterized by counsel, but while I have no
12 doubt that the issues identified by counsel are, in fact, the
13 issues that will find their way into the motion to dismiss, it
14 may be that the motion itself carries with it some issues that
15 may lead to a request for discovery with respect to the motion
16 to dismiss. And it will, no doubt, be a contested matter and
17 be a matter that could be delayed.

18 Given the schedule that we have, however, I would
19 encourage the parties to avoid delay and to move each
20 procedural aspect of both the main case and the adversary
21 proceeding forward as expeditiously as possible. That does not
22 mean that delay for a good cause will not be considered.

23 Now, there were two parties, representatives of the
24 third lienors and Wilmington Trust Company, who expressed some
25 interest in using today's scheduling hearing as some

1 opportunity to make noise about monitoring the adversary
2 proceeding. And I mean no disrespect in saying making noise.
3 It's, in effect, you're using the opportunity of a scheduled
4 hearing to express a desire to do something which is not
5 presently before me in the form of a motion or any other
6 request that requires my attention. I'm inclined not to give
7 you the opportunity to speak to the issue, because it's not
8 presently before me, but would suggest that to the extent that
9 there is, quote, "monitoring", close quote, of the adversary
10 proceeding it is probably premature to get into that until
11 after we've heard and considered the motion to dismiss because
12 the adversary proceeding either will live or die, presumably,
13 after that.

14 Additionally, ordinarily parties do not have a right
15 to monitor proceedings in an adversary proceeding unless they,
16 like a creditors' committee, have a statutory obligation to
17 monitor or there is a motion to intervene which is granted. If
18 the parties to the adversary proceeding, nonetheless, wish to
19 provide access to information relating to the adversary
20 proceeding that's their privilege, and if they choose not to
21 that's their privilege as well.

22 Is there anything more for this morning?

23 MR. POWELL: Not from our side, sir.

24 THE COURT: Mr. Basta?

25 MR. BASTA: I had a very small thing, Your Honor,

1 which is during our first day presentation I used three
2 visuals, a petition date, an organizational structure, a
3 treatment chart and a post-effective date structure, and there
4 was a slight error in our effective date structure that we used
5 that day. The ownership interest from CCI into Holdco was
6 incorrectly reflected on the chart that I gave to the Court,
7 and I would just like to hand up a corrected version.

8 THE COURT: That's fine. Is the error highlighted?
9 Apparently not.

10 UNIDENTIFIED SPEAKER: It is now, Your Honor.

11 MR. BASTA: Yes, Your Honor.

12 THE COURT: Now, it is.

13 MR. BASTA: Thank you, Your Honor.

14 THE COURT: Okay. Thank you.

15 MR. ANGIOLILLO: Your Honor, if I may? It was
16 unclear to me with respect to what counsel indicated they were
17 prepared to do regarding the deadlines for producing documents,
18 the matter of their advisors, and, if I may, ask Your Honor if
19 we could just have clarification so that we don't have another
20 set of negotiations regarding the advisors. Lazard, for
21 example. We've been working in the context of each of the
22 interested groups and their advisors, and I just would ask,
23 respectfully, if we could have some clarification on that.

24 THE COURT: Fine.

25 MR. ANGIOLILLO: Thank you.

1 MR. POWELL: Jeff Powell for the debtors, Your Honor.
2 I intended my remarks to include the advisors as well.

3 MR. EHRLICH: Andrew Ehrlich for the noteholders. We
4 intended to include our advisors as well.

5 MR. ZIMET: Ditto, Your Honor.

6 MR. ANGIOLILLO: Thank you.

7 THE COURT: Everybody's being very cooperative --

8 ALL: Thank you, Your Honor.

9 THE COURT: -- which is nice to see. Is there
10 anything more for this morning? If you'll then submit a form
11 of scheduling order that reflects the understandings reached
12 during this morning's hearing I'll enter that promptly. We're
13 adjourned. Thank you.

14 (Proceedings concluded at 11:47 AM)

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I N D E X

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C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a true and accurate record of the proceedings.

HANA COPPERMAN

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Date: April 7, 2009